



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 17, 2004

Mr. Jacques Trevino
General Counsel
Gorena & Trevino
420 West University Drive
Edinburg, Texas 78539

OR2004-2011

Dear Mr. Trevino:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 197876.

The Edinburg Consolidated Independent School District (the "district"), which you represent, received a request for "all [district] liability insurance policies that were in effect on 18 December 2001." You indicate that the requested information is excepted from disclosure pursuant to sections 552.101 and 552.107 of the Government Code. We have considered the exceptions you claim. We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that person may submit comments stating why information should or should not be released).

We note that section 552.301(b) of the Government Code requires that a governmental body ask the attorney general for a decision as to whether requested information must be disclosed and state the exceptions to disclosure that apply to the requested information not later than the tenth business day after the date of receiving the written request for information. *See* Gov't Code § 552.301(b). In addition, section 552.301(e) provides that a governmental body that requests an attorney general decision under section 552.301(a) must, within a reasonable time, but not later than the fifteenth business day after the date of receiving the written request, submit to the attorney general (1) written comments stating the reasons why the stated exceptions to disclosure apply that would allow the requested information to be withheld; (2) a copy of the written request for information; (3) a signed statement of or

evidence sufficient to establish the date that the governmental body received the written request; and (4) a copy of the specific information requested or representative samples of it, labeled to indicate which exceptions to disclosure apply to which parts of the documents. *See id.* § 552.301(e).

You indicate that the district received the request for information on November 11, 2003. Therefore, the district had until November 26, 2003 to state all of the exceptions to disclosure that apply to the requested information. Further, the district had until December 5, 2003 to provide us with the information required to be submitted to us for review under section 552.301(e). We note, however, that the district did not indicate that the requested information was excepted from disclosure until January 12, 2004. We further note that the district did not provide us with any of the items required to be submitted to us under section 552.301(e) until that same date. In addition, to date, the district has not provided us with the requested insurance policies or representative samples of those policies. Accordingly, we conclude that the district failed to comply with the procedural requirements of section 552.301 in requesting this decision from us with regard to the requested information.

Because the district failed to comply with the procedural requirements of section 552.301 in requesting this decision from us, the requested information is now presumed public. *See* Gov't Code § 552.302; *see also Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ); *City of Houston v. Houston Chronicle Publ'g Co.*, 673 S.W.2d 316, 323 (Tex. App.--Houston [1st Dist.] 1984, no writ); Open Records Decision No. 319 (1982). The district must demonstrate a compelling interest in order to overcome the presumption that the requested information is now public. *See id.* Normally, a compelling interest is demonstrated when some other source of law makes the requested information confidential or third party interests are at stake. *See* Open Records Decision No. 150 at 2 (1977). Although the district indicates that the requested information is excepted from disclosure under section 552.107 of the Government Code, we note that section 552.107 is a discretionary exception to disclosure under the Public Information Act (the "Act") that does not constitute a compelling interest that is sufficient to overcome the existing presumption that the requested information is now public.¹ Further, we note that we have no basis for concluding that any portion of the requested information is excepted from disclosure pursuant to section 552.101 of the Government Code because the district failed to submit the

¹ Discretionary exceptions are intended to protect only the interests of the governmental body, as distinct from exceptions which are intended to protect information deemed confidential by law or the interests of third parties. *See, e.g.,* Open Records Decision Nos. 630 at 4 (1994) (governmental body may waive attorney-client privilege, section 552.107(1)), 551 (1990) (statutory predecessor to section 552.103 serves only to protect governmental body's position in litigation and does not itself make information confidential), 522 at 4 (1989) (discretionary exceptions in general), 473 (1987) (governmental body may waive statutory predecessor to section 552.111); *see also Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103). Discretionary exceptions, therefore, do not constitute "other law" that makes information confidential.

requested insurance policies, or representative samples of those policies, to us for our review. Consequently, we conclude that the district must release the requested information to the requestor.

However, we caution the district that section 552.352 of the Government Code imposes criminal penalties for the release of confidential information. *See* Gov't Code § 552.352. Prior to releasing the requested information, the district should ensure that it does not contain any such confidential information. If the district believes that any portion of the requested information is indeed confidential and may not lawfully be released, it must challenge this ruling in court as outlined below.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

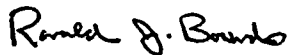
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Ronald J. Bounds
Assistant Attorney General
Open Records Division

RJB/lmt

Ref: ID# 197876

c: Mr. Julian C. Gomez
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